

**SETTLEMENT AGREEMENT
AND RELEASE OF CLAIMS**

Balangitao, et. al. v. Hayward Unified School District

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I. RECITALS

- A. On or about April 28, 2006, through their counsel of record, Rodney Balangitao, by and through his education guardian ad litem Dolly Balangitao, and Xavier Cordero, by and through his conservator Mary Lou Cordero (collectively “Claimants”), on behalf of themselves and all others similarly situated, submitted a Compliance Complaint with the California Department of Education against the Hayward Unified School District (“District”) on behalf of students in the Severely Handicapped Transition Class that was then located in the English Language Center (ELC). The Compliance Complaint alleged that the District failed to provide these students with minimally adequate teachers and Facilities and appropriate instruction and services in the least restrictive environment.
- B. Subsequent to the Compliance Complaint filing, Claimants entered into a Tolling Agreement with the District and its Governing Board on behalf of all students with disabilities who have attended District schools within three years prior to the date of execution of the Tolling Agreement. A true and correct copy of the Tolling Agreement is attached hereto as Exhibit A and incorporated by reference.
- C. Claimants and the District, through their respective counsel (Protection and Advocacy, Inc., Disability Rights Advocates, Laplante, Spinelli, Donald & Nott, and Lozano Smith) began settlement negotiations under the terms of the Tolling Agreement. As part of such efforts, Claimants withdrew their Compliance Complaint and the case was closed effective August 21, 2006. During the course of negotiations, the District and the Claimants agreed to pursue a global resolution of claims, but not to pursue a class remedy enforceable through the provisions of a Consent Decree.

- D. The Parties now agree to resolve the issues addressed in the Tolling Agreement by entering into this Settlement Agreement and Release of Claims (“Agreement”). Claimants are proceeding through their parents acting as guardians ad litem or other appropriate authority.
- E. The District denies any and all liabilities to the Claimants, and denies that it has violated any laws – federal, state or local – pertaining to architectural and/or programmatic Access for Students with Disabilities in the District.
- F. The District and the Claimants now desire to resolve their differences and disputes, including but not limited to, those arising under the Tolling Agreement, in such a manner as to maintain and improve Access for persons with disabilities to all of the District’s Programs, services and activities, and to avoid the uncertainties and costs of litigation for all Parties.
- G. The District and the Claimants (collectively, the “Parties”) agree that this Agreement is a compromise and settlement of disputed claims, and shall not represent, constitute or be construed as an admission by the District of liability in any pending or future legal action, claim, or administrative proceeding that may be brought regarding the subject matter of this Agreement.
- H. The Effective Date of this Agreement is July 1, 2008.

- I. Upon full execution of this Agreement by all Parties and approval by the District's Governing Board, the Parties will deem the Tolling Agreement null, void, and of no further force and effect.
- J. Each recital is incorporated herein by reference as a term of the Agreement.

II. DEFINITIONS

As used in this Agreement, the following terms shall have the meaning ascribed to them in this section and in the Recitals. Except to the extent clearly required to the contrary by the context of its usage in this Agreement, any term not expressly defined in this section or elsewhere in this Agreement that has an expressly defined meaning in the Federal Statutes and Regulations and/or the State Statutes and Regulations, shall have the meaning ascribed to it by the Federal Statutes and Regulations and/or the State Statutes and Regulations. All other terms shall be interpreted according to their plain and ordinary meaning.

A. Access

The terms "Access" and "Accessible," unless otherwise indicated, mean and refer to conditions that comply with the standards set forth in the Federal Statutes and Regulations and/or the State Statutes and Regulations as defined in § I and § S, below. If the Federal Statutes and Regulations conflict with the State Statutes and Regulations, the District will comply with the standard that provides greater Access, in accordance with 42 U.S.C. § 12201(b). If there is a dispute regarding the question of which standard provides greater Access, such dispute will be resolved by the District submitting the question in writing to the Access Consultant, with a copy to Claimants' Counsel. The decision of the Access Consultant will be binding.

B. ADA/ADAAG

The term “ADA” means and refers to Title II of the Americans with Disabilities Act, as contained at 42 U.S.C. § 12101 *et seq.*, in effect as of July 1, 2008. “ADAAG” means and refers to the Americans with Disabilities Act Accessibility Guidelines, codified at Appendix A to 28 C.F.R. Part 36 in effect as of July 1, 2008.

C. Agreement

The term “Agreement” means and refers to this Settlement Agreement and Release of Claims.

D. Architectural Barriers

The term “Architectural Barriers” means and refers to physical conditions at Facilities within the District that do not meet the specifications set forth in ADAAG and/or Title 24. The existence of an Architectural Barrier does not necessarily indicate a violation of the State Statutes & Regulations and/or Federal Statutes & Regulations.

E. Claimants

The term “Claimants” (or “all Claimants”) means and refers to Rodney Balangitao, by and through his education guardian ad litem Dolly Balangitao, and Xavier Cordero, by and through his conservator Mary Lou Cordero.

F. Claimants’ Counsel

The term “Claimants’ Counsel” means and refers to the law firms Disability Rights Advocates and Protection and Advocacy, Inc., including the lawyers and other employees therein.

G. District

The term “District” means and refers to the Hayward Unified School District, its employees, and its Board of Trustees (“Governing Board”).

H. Effective Date

Notwithstanding the date this Agreement is finalized and executed, the Agreement will be deemed effective as of July 1, 2008.

I. Facilities

The terms “Facility” and/or “Facilities” mean and refer to any or all portions of the District’s physical premises where students, parents and/or other members of the public are invited or expected to be present, including but not limited to parking areas; curbs, curb ramps and crosswalks; paths of travel; ramps; stairs; doors; visual and audible communications; restrooms; drinking fountains; libraries; commons/lunch areas; assembly areas (including gymnasiums, multi-purpose rooms, theaters, and athletic fields/stadiums); locker rooms; playground and outdoor sports areas; emergency warning systems; and classrooms, and all other locations which the District maintains and/or controls, and where District Programs, activities and services are provided. A list of school Facilities is attached hereto as Exhibit B.

J. Facilities Master Plan

The term “Facilities Master Plan” means and refers to the Hayward Unified School District’s District-wide Facilities Master Plan approved in 2006, which is based on a series of bond measures, proposes a building program at the forefront of educational design, and provides a plan that ensures the quality and equity of facilities District-wide. Based upon the passage of the first Bond Measure in June 2008, the initial stage of the Facilities Master Plan will be implemented over the next three (3) years to renovate and rebuild identified District Facilities. A document specifying the proposed timeline for

modernization and new construction of District Facilities under the Facilities Master Plan is attached hereto as Exhibit C and incorporated herein.

K. Federal Statutes & Regulations

The term “Federal Statutes & Regulations” means and refers to the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, the Individuals with Disabilities Education Act, (IDEA) 20 USC §1401 *et seq.*, and the regulations promulgated thereunder.

L. Party

The terms “Party” or “Parties” mean and refer to the District and all Claimants.

M. Policy Neutrals

The term “Policy Neutrals” refers to the individuals retained in accordance with § IV.B.1 of this Agreement.

N. Policy Verifier(s)

The term “Policy Verifier(s)” means and refers to an independent consultant or consultants who will periodically review the District’s Special Education Policies and Procedures (sometimes hereinafter “SPED Policies and Procedures) and monitor the District’s compliance with the Special Education Policy and Procedure provisions of this Agreement, in accordance with § V.B.2 of this Agreement.

O. Program

The term “Program” means and refers to all of the operations and activities of the District that are used by students.

P. Program Access

The term “Program Access” means and refers to the provision of Access to the Programs, services, and activities of the District for people with disabilities, as required

under the Federal Statutes and Regulations, the State Statutes and Regulations, and applicable case law. The Parties understand and acknowledge that it is not necessary to remove all Architectural Barriers at a Facility to provide Program Access.

Q. Released Parties

The term “Released Parties” means and refers to the District and its officers, board members, trustees, directors, employees, representatives, attorneys, agents, and insurers, and Schools Insurance Authority, a Joint Powers Authority.

R. Report

The term “Report” means and refers to either an Annual Prospective Report or a Periodic Report to be submitted in accordance with § V of this Agreement. The term “Annual Prospective Report” means a yearly report, setting forth a prospective plan for Architectural Barrier removal to be taken in the upcoming year, to implement the Transition Plan. The term “Periodic Report” means a report at the end of a defined period of time describing the actual work done to remove Architectural Barriers under the Architectural Barrier removal provisions of this Agreement since the time of any prior report. “Periodic Report” also means to a report at the end of a defined period of time describing the actual work done to implement the accepted recommendations of the Policy Neutrals. The Periodic Reports may be one combined report including work done on both Architectural Barrier removal and Special Education Policy and Procedure implementation, or may be separate reports.

S. Settlement Period

For the purposes of this Agreement, there will be two distinct Settlement Periods. The first Settlement Period addressing obligations set forth in § IV.B will last no more than the first four years following the Effective Date of the Agreement, July 1, 2008 –

June 30, 2012, and will comprise the “Special Education Policies and Procedures Settlement Period.” All work done on the development, adoption, and implementation of recommendations from the Policy Neutrals regarding the District’s Special Education Policies and Procedures will be conducted during this time.

The second Settlement Period, addressing obligations set forth in § IV.A and lasting from July 1, 2008 – June 30, 2020, will comprise the Architectural Settlement Period and will cover all Architectural Barrier removal work done under the scope of this Agreement.

T. Special Education

The term “Special Education” means specially designed instruction, as defined by the IDEA, the California Education Code, and the regulations promulgated thereunder.

U. Special Education Policies and Procedures

The terms “Special Education Policies and Procedures” or “SPED Policies and Procedures” mean and refer to written documents including, but not limited to, administrative regulations, guidelines, memoranda and other communications as well as unwritten practices that concern, relate to or otherwise affect the mission, philosophy, operations, maintenance and/or organization, administration and control of Programs and services for Students with Disabilities enrolled in the District, including those eligible for special education under the IDEA and California Education Code, § 56000 *et seq.*

V. State Statutes & Regulations

The term “State Statutes & Regulations” means the Unruh Act, California Civil Code § 51 *et seq.*, the Disabled Persons Act, California Civil Code § 54 *et seq.*, California Government Code § 11135 *et seq.*, California Health and Safety Code §

19955, California Education Code § 56000 *et seq.*, and the regulations promulgated thereunder, including Title 24 of the California Building Code.

W. Student with a Disability

The term “Student with a Disability” means a person with a disability who is enrolled in the District and who is eligible for Special Education placement and services, or who has a disability as defined by the Federal Statutes & Regulations and/or State Statutes & Regulations.

X. Technical Infeasibility

The term “Technical Infeasibility” (or “Technically Infeasible”) means, with respect to an alteration of a building or a Facility, that the alteration has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member that is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that comply with new construction standards.

Y. Transition Plan

The term “Transition Plan” means and refers to the transition plan required pursuant to Title II of the ADA and its implementing regulations, 28 C.F.R. § 35.150(d).

Z. Year

The term “Year” will mean the District’s fiscal year which runs from July 1 of any given year through June 30th of the following year. The term “Year” does not mean calendar year for purposes of this Agreement.

III. SCOPE OF AGREEMENT

This Agreement specifically encompasses: (A) Claimants’ claims regarding the District’s alleged failure to provide Program Access by removing Architectural Barriers

and/or developing Special Education Policies and Procedures as appropriate; (B) claims regarding the District's alleged failure to provide a free and appropriate public education in the least restrictive environment and/or its alleged failure to develop appropriate Special Education Policies and Procedures; and (C) claims for damages by the Claimants. It does not include any claims regarding the individual IEPs of the Claimants, including compensatory education, as Claimants have previously resolved those claims through a separate process. It does not include any claims that could be brought by any Student with a Disability who is not a Claimant against the District. Nothing in this Agreement is intended to extend or reinstate any expired statute of limitations, or resurrect stale or expired claims.

IV. DISTRICT OBLIGATIONS

A. Program Access and Architectural Barrier Removal

1. Preparation of a Transition Plan

a. The Access Consultant

Upon agreement by the Parties, the District has retained Barbara Thorpe and her firm Disability Access Consultants, Inc. ("DAC"), as the Access Consultant. If DAC becomes unavailable to conduct this work, the Parties will agree on a successor Access Consultant. If the Parties cannot agree, each Party shall propose a qualified candidate to Cathy Yanni of JAMS (or her successor), in accordance with § VI below, and Cathy Yanni will select the replacement Access Consultant.

b. Recommendations of the Access Consultant and Development of the Transition Plan

DAC previously conducted a survey of Architectural Barriers in the District in 2001 and 2002, and in evaluating the Accessibility of the District's Facilities since the execution of the Tolling Agreement, DAC has re-inspected all District Facilities. DAC

has developed Architectural Barrier removal proposals and plans for each open and operating Facility based on the original surveys and updated reinspections. Said recommendations are referred to as the “Short Reports,” which provide the “Estimated Readily Achievable Barrier Removal Recommendations and Costs” for all currently open and operating Facilities, as set forth in Exhibit D, attached hereto. In conjunction with the Short Reports, the District will evaluate each Program provided at each Facility to determine whether to provide Program Access through removal of Architectural Barriers as recommended by the Access Consultant or through other means.

These plans (i.e., the Short Reports), when combined with the software programs for tracking of repairs and expenditures, the full re-inspection reports, the District’s Facilities Master Plan, and the District’s analysis of whether Program Access will be provided by removal of Architectural Barriers or by some other means, will compromise the District’s Initial Transition Plan which will be provided in full to Claimants’ Counsel by November 18, 2008. The comprehensive compilation of these plans must meet all statutory and regulatory requirements for a Transition Plan.

The Initial Transition Plan will be updated by the District annually either through its yearly Prospective Report of what Architectural Barriers are to be removed in the next Year or by a separate document.

c. Transition Plan Review

Within 30 days after the District provides the Initial Transition Plan to Claimants’ Counsel, the Parties will meet and confer to discuss any concerns with the Initial Transition Plan. Following such meeting, the District will have 30 days to revise the Initial Transition Plan based on the meeting of the Parties, or to indicate that it does not intend to make any revisions. If the Parties do not agree that the Initial Transition Plan is

adequate following the meeting and any revisions, either Party may pursue Dispute Resolution under § VI below.

d. Architectural Barrier Removal Work

The District will remove Architectural Barriers at each Facility based on the Short Reports and any District analysis that Program Access can be provided through means other than Architectural Barrier removal. The District will maintain its discretion to determine whether Architectural Barriers will be removed on a site-by-site basis, and which sites will be prioritized in which order, or on a project-by-project basis, except as follows:

First, if a Student with a Disability will be enrolled within a Year at a Facility that has not undergone Architectural Barrier removal, that Facility will be given priority for Architectural Barrier removal for the following Year. Additionally, the District will identify barriers that can be removed on an interim basis through the use of the Quick Fix Fund, as set forth in § IV.A.3, below.

Second, if a Facility is scheduled for Architectural Barrier removal through implementation of the Facilities Master Plan, or other source of funding, such Facility will not be subject to Architectural Barrier removal as dictated by the Short Reports and, instead, will undergo Architectural Barrier removal as part of the overall modernization effort set out in the Facilities Master Plan or other funding mechanism. In June 2008, the voters of Hayward passed the first bond implementing the Facilities Master Plan and the following schools will undergo Architectural Barrier removal in conjunction with such modernization: East Avenue Elementary School, Harder Elementary School, Schafer Park Elementary School, Tyrell Elementary School, and Martin Luther King, Jr. Middle School.

2. Architectural Barrier Removal Funding Obligation

a. Annual Obligation

For the duration of the Settlement Period, the District will dedicate funding in an annual amount equal to ten percent (10%) of the District's annual Maintenance and Operations budget ("M&O Budget") to remove Architectural Barriers as necessary to provide Program Access, in accordance with the priorities set forth in the Transition Plan. This annual obligation can be satisfied through hiring of outside contractors or by use of District personnel, and can include costs of materials used as well as District salaries and benefits in an amount that addresses the time spent by District Personnel doing Architectural Barrier removal work.

Should the District exceed its annual obligation in any given fiscal Year, the District will receive credit for such additional expenditure up to a maximum of 20% of that Year's annual obligation. The 20% rollover credit will reduce the next Year's annual obligation by that amount. Should the District fail to spend its entire annual obligation for a given Year, it will be required to spend the shortfall in the following Year, in addition to that Year's annual obligation.

b. Additional Funding

Any bond funding the District obtains in accordance with its Facilities Master Plan, or other sources of new funding appropriate for Facilities improvements during the Architectural Settlement Period, will supplement the annual funding obligation set forth above.

c. Process for Allocating New Funding

If new funding for Facilities becomes available from any source other than bonds issued in conjunction with the Facilities Master Plan during the Settlement Period, the

new funding will be reviewed to determine whether and how much will be allocated to Architectural Barrier removal work based on the following options:

1. If the new funding is exclusively dedicated for work on Facilities that does not impact Access (for example, roofing or HVAC), none of the new money will be dedicated to Architectural Barrier removal.

2. If the new funding is exclusively dedicated for Access work, 100% of the new money will be dedicated to Architectural Barrier removal.

3. If the new funding for Facilities is available for general Facilities use or for work that includes renovations impacting Access, a percentage of the new funding source equal to the percentage of the M&O Budget committed to the annual funding obligation (i.e., 10%) will be allocated for Architectural Barrier removal.

3. Expedited Architectural Barrier Removal and Quick Fix Fund

In addition to the District's annual funding obligations described in § 2, the District shall maintain an annual Quick Fix fund in the amount of \$30,000, which will be re-evaluated by the District each year of the Architectural Settlement Period for adequacy, to be used in the following circumstances:

a. To provide temporary Program Access through expedited Architectural Barrier removal or otherwise, to a Student with a Disability that impacts his or her mobility, vision and/or hearing when the District receives notice that such Student will be attending a District Facility, and Architectural Barrier removal under this Agreement has not been completed at such Facility as of the time such Student begins attendance at the Facility. Any proposed expedited Architectural Barrier removal plan by the District will be submitted to Claimants' Counsel for review. Alternatively, if the District can provide temporary Program Access to such Student without Architectural

Barrier removal, it will submit its proposal for such temporary Program Access to the Access Monitor for approval, with a copy to Claimants' Counsel. If Claimants' Counsel disputes that the proposal will provide temporary Program Access for such Student without Architectural Barrier removal, or if Claimants' Counsel disagrees with the form of expedited Architectural Barrier removal proposed by the District, the issue will be submitted to the Access Monitor for a final and binding decision on the Parties.

b. To reasonably respond to and remedy a written complaint received by the District from a Student with a Disability that impacts his or her mobility, vision and/or hearing, that there is an Architectural Barrier at such Student's Facility which prevents Program Access for such Student, and the Facility is not scheduled for Architectural Barrier removal under this Agreement or otherwise, within twelve (12) months from the date of the written complaint.

c. In the event that the District receives notice under either subsections (a) or (b) above, and the Student giving such notice is expected to remain assigned to the particular District Facility for more than one school year, in addition to using the Quick Fix Fund to undertake temporary or expedited Architectural Barrier removal in order to provide Program Access, the District will be obligated to meet and confer with Claimants' Counsel to reach agreement on whether re-prioritization of previously scheduled Architectural Barrier removal efforts at other District Facilities needs to occur to provide long-term Program Access to such Student(s) giving notice under subsections (a) or (b) above, and, if so, which District Facilities' Architectural Barrier removal efforts will be delayed or deferred. If the Parties cannot reach agreement, they each may submit a proposal limited to the issue of re-

prioritization to the Access Monitor who will make a decision thereon that is final and binding upon the Parties.

d. The District will include in its final Periodic Report for each Year of the Settlement Period: (a) the number and nature of identified individuals under subsection (a) and complaints received under subsection (b) above for the preceding Year (without identifying student names or other personal information); (b) what Architectural Barrier removal or other efforts were undertaken to respond to the complaint(s); (c) what re-prioritization or scheduling changes for Architectural Barrier Removal for District Facilities were made to the District's previous Year's Annual Prospective Report; and (d) whether the amount of the Quick Fix Fund needs to be increased, decreased, or remain the same for the next Year of the Architectural Settlement Period.

B. Special Education Policy and Procedure Review

1. The Plan

The Parties have jointly agreed to retain Malisa Cochran, Nan Graham and Johnny Welton as Policy Neutrals to assist the Parties in developing recommendations to improve the District's Special Education Policies and Procedures. Since the execution of the Tolling Agreement, the Policy Neutrals have developed an Action Plan that is attached hereto as Exhibit E. The Action Plan includes criteria through which the Policy Neutrals will evaluate the District's performance in the following areas relevant to the Special Education Policies and Procedures: the Individualized Education Program (IEP) process (including meeting participation, access to the IEP, and components of the IEP); transition planning and services; recruitment, retention and support of Special Education teachers; training and support of paraprofessionals; the Least Restrictive Environment

Initiative; Alternative Dispute Resolution with parents; training and support of Support Staff Personnel; and the use of Student Study Teams and Child Find. Additionally, as outlined in the Action Plan, the Policy Neutrals will update information collected previously for the District and set forth in a report entitled “Hayward Unified School District: Evaluation of Special Education Programs - Final Report” (Feb. 6, 2004) (“School Services California Report”).

2. Timeline for Implementation

The Policy Neutrals will begin the information gathering and evaluation process set forth in the Action Plan on July 1, 2008, and will complete their work no later than December 31, 2008.

3. Status Meeting

As soon as is reasonably feasible after the Policy Neutrals complete their information gathering and initial evaluation, but no later than November 15, 2008, the Parties will meet informally with the Policy Neutrals for a preliminary discussion of the Policy Neutrals’ findings, including a determination of whether any additional information gathering is appropriate.

4. Follow-up and Report

Within thirty (30) days after the informal meeting between the Parties and the Policy Neutrals, the latter will conduct any necessary follow-up and issue a Report detailing their findings and any Recommendations based on such findings.

5. Response to Recommendations

Upon delivery of the Policy Neutrals’ Report, including their Recommendations, the Parties will meet and confer for up to 75 days to determine which Recommendations the District will adopt and the timeframe for adopting such Recommendations. The

Parties agree that the recommendations offered by the Policy Neutrals for implementation by the District will be entitled to substantial weight in such discussions. If the Parties are unable to reach agreement regarding the adoption of any particular Recommendation(s) during the meet and confer period, the Parties will pursue the matter through the Dispute Resolution process set out in § VI through steps 1 and 2 for any recommendation on which the Parties do not reach agreement and through step 3 for any issue on which the Parties do not reach agreement that is based on a legal obligation.

V. REPORTS AND MONITORING

A. Reports and Monitoring of Architectural Barrier Removal

1. Annual Prospective Report

Within 30 days of the start of each Year until the end of the Architectural Settlement Period, with the exception of the first Year, wherein the District will provide the first Annual Prospective Report within 30 days of the execution of the Agreement, the District shall provide an Annual Prospective Report setting forth a prospective plan for how it will allocate its annual funding obligation and any additional funding to implement the Transition Plan to be used in the upcoming Year. The District may develop such a prospective plan as it deems appropriate.

For each Architectural Barrier addressed, the Annual Prospective Report shall include: (a) the site, (b) the specific barrier, (c) the solution option or “fix”, and (d) the estimated cost of the fix (including information on the source the District used as the basis for the estimates). It will also preliminarily designate whether the work will be done by outside contractors or by District employees. For work being done by District employees, the estimated cost will be the estimated time the work will take and the employees’ pay and benefits for that amount of time, plus the cost of any materials.

2. Periodic Reports

For the first two Years of the Settlement Period, within 30 days after the end of each quarter, the District will prepare a Report describing the actual work done during the previous quarter to provide Program Access, including removal of Architectural Barriers or modifications of policies and procedures other than Special Education Policies and Procedures, and/or any other modifications of Programs, including, for each Architectural Barrier removed, a specific description of: (a) the site, (b) the specific barrier, and (c) the fix that was put in place. The Report shall also contain any information required by § IV.A.3.d above and an accounting of the costs of Architectural Barrier removal at each site, but does not need to break costs down by individual Architectural Barrier.

Following the second year of the Architectural Settlement Period, the District shall produce Reports semi-annually rather than quarterly. Collectively, these Reports shall be referred to as “Periodic Reports.”

The Periodic Reports shall also include a list of all Architectural Barriers, if any, that the District asserts it is not obligated to remove. If the District asserts that it is not obligated to remove an Architectural Barrier because such removal is unnecessary to provide Program Access, the District shall provide in the Report a written statement by either the Director of Maintenance and Operations or the ADA Coordinator setting forth the other steps that are being taken in order to ensure Program Access is provided. If the District asserts that Architectural Barrier removal is excused on another statutory basis, such as Technical Infeasibility, the District shall provide in the Report a written statement by either the Director of Maintenance and Operations or the ADA Coordinator providing

the reasons for reaching that conclusion, including his or her consideration of the District's financial resources.

3. Claimants' Counsel

All Periodic Reports will be provided to Claimants' Counsel promptly upon completion. Any objections or potential challenges Claimants may raise in response to any of the Reports or any issues which Claimants' Counsel believe merit further discussion must be identified in writing within 45 days of the issuance of the Report by the District.

4. Access Monitor

During the first four Years of the Architectural Settlement Period and inclusive of the time necessary to complete work to monitor the fourth year of compliance and provide a Monitor's Report, the District will retain the services of an outside consultant to monitor its compliance with its Program Access provisions (the "Access Monitor"). The Parties agree that DAC shall serve as the Access Monitor. If DAC becomes unavailable to conduct this work, the Parties will agree on a successor Access Monitor. If at any time the Parties cannot agree on a consultant to serve as the Access Monitor, each Party shall propose a qualified candidate to Cathy Yanni (or her successor), and Cathy Yanni will select the replacement Access Monitor. Any such decision will be binding on the Parties.

If, based on documentation from the Access Monitor of the District's repeated noncompliance in a particular area that is not remedied through the meet and confer process, Claimants' Counsel reasonably believes that more than four Years of monitoring Architectural Barrier removal is necessary, Claimants' Counsel can submit a request to

the District that the District retain the Access Monitor for an additional Year. The Access Monitor would be retained for the additional Year solely to review areas that were previously problematic for the District and the source of the request to extend the monitoring period. If the District retains the Access Monitor for an additional Year, but Claimants' Counsel reasonably believes based on the Access Monitor's reports regarding compliance during that time frame that yet further additional monitoring is required, Claimants' Counsel can request that the District retain the Access Monitor for a further Year.

If the Parties cannot agree as to whether additional monitoring of Architectural Barrier removal is necessary, the Parties shall take the matter to Cathy Yanni in accordance with the Dispute Resolution procedure, set out in § VI, below

a. Receipt of Reports

During the first four Years of the Architectural Settlement Period and inclusive of the time necessary to complete work to monitor the fourth Year of compliance and provide a Monitor's Report, the Access Monitor shall receive all Annual Prospective Reports and all Periodic Reports from the District regarding implementation of the District's Transition Plan, including the removal of Architectural Barriers and other efforts to provide Program Access.

b. Inspections

Within 45 days after the production of each Periodic Report, the Access Monitor will inspect up to 10% of the locations where Architectural Barriers have been removed to ensure that such barrier removal has been completed properly. The sites to be inspected shall be selected by the Access Monitor. Such inspections will determine

whether there are remaining Architectural Barriers at sites that were identified as having all Architectural Barriers removed, or whether Architectural Barrier removal work was not completed properly.

The Access Monitor will also inspect all locations where the District asserts that it is Technically Infeasible to remove an Architectural Barrier or that an Architectural Barrier is not being removed based on any defense except for the defense that Architectural Barrier removal is unnecessary to provide Program Access. For each such location(s), the Access Monitor will indicate whether he or she concurs with the reasons given by the District, and whether he or she has a proposal for how the remaining Architectural Barrier(s) could be removed.

c. Program Access Evaluation

For each Program that the District reports that it will provide Access through a mechanism other than removal of Architectural Barriers, the Access Monitor will review the District's proposal and indicate whether he or she believes it is adequate to provide Program Access. If the Access Monitor believes that the District's proposal is not sufficient to provide Program Access, the Access Monitor will make recommendations regarding additional steps that the District can take to provide Program Access, as set forth in subsection (d), below.

d. Report from Monitor

Within 30 days after each inspection and evaluation set forth in subsection (b), above, is complete, the Access Monitor shall produce a Report containing his or her findings to the Parties. The District will have 30 days thereafter to (1) remove or make provision for removal of any identified remaining Architectural Barriers or else to

determine that there is a dispute regarding such barriers at any specific location, and (2) take additional steps to provide Program Access or else to determine that there is a dispute regarding whether such additional steps are required. Any dispute raised by the District following receipt of the Monitor's Report will be resolved through the Dispute Resolution Procedure set forth in § VI, below.

B. Reports and Monitoring of Special Education Policy and Procedure Obligations

1. Periodic Reports

Beginning July 31, 2009, and continuing every six months (January 31 and July 31) of Years two through four of the Special Education Policy and Procedure Settlement Period, the District will prepare a Report for Claimants' Counsel and the Policy Verifier(s) detailing all steps it has taken to finalize and implement the recommendations regarding Special Education Policy and Procedures as adopted pursuant to § IV.B.5 of this Agreement. The District is under no obligation to provide a report for the first Year of the Special Education Policy and Procedure Settlement Period, as the Parties will be engaged in the process set out in §§ IV.B.1-5.

2. Policy Verifier(s)

During the Special Education Policies and Procedures Settlement Period, the District will retain the services of an outside consultant or team of consultants to evaluate its implementation of the adopted recommendations of the Policy Neutrals (the "Policy Verifier(s)") on two occasions. The Policy Verifier(s) will be selected by the District with the approval of Claimants' Counsel and shall be a person(s) with professional experience in higher education and expertise in the field of Special Education.

The Policy Verifier(s) will receive all Periodic Reports from the District detailing its efforts to implement the adopted recommendations of the Policy Neutrals. At the conclusion of the second Year of the Special Education Policies and Procedures Settlement Period and again six months before the conclusion of the final Year of the Special Education Policies and Procedures Settlement Period, the Policy Verifier(s) will review the Periodic Reports and determine what additional information, if any, is necessary to evaluate the District's implementation efforts. If additional information is required, the Policy Verifier(s) will request such information from the District either in writing or orally, to be determined at the Verifier's discretion. The Policy Verifier(s) will then verify that the District's efforts have resulted in or will result in full implementation by the conclusion of the Settlement Period of the adopted recommendations of the Policy Neutrals. Such verification may involve consultation with District employees, teachers, parents, and other stakeholders.

Once the Policy Verifier(s) has completed the verification process, s/he will produce a report on each occasion detailing her or his findings within 45 days of the completion of the verification process. The report will be provided to counsel for the Parties. After conducting a review of the District's implementation of the adopted recommendations and issuing a preliminary report, the Policy Verifier(s) will then meet with District personnel, not to include counsel, to discuss ways the District can improve its implementation efforts and/or to assist District personnel in developing strategies to address problematic areas of implementation. Within two weeks after this meeting, the Policy Verifier(s) will issue a subsequent report to counsel for the Parties setting forth any additional steps the District plans to take to fully implement the adopted

recommendations.

The first set of Verifier reports will confirm whether the District is on track to successfully implement the adopted recommendations. The second and final set of Verifier reports will specifically identify completed areas of implementation, anticipated completion dates of areas not fully implemented, and any barriers to full and final implementation.

Any disputes between the Parties regarding the District's implementation of the adopted recommendations based on the District's legal obligations will proceed through § VI.3 of the Dispute Resolution Process. The Parties agree to meet and confer to attempt to resolve any other disputes.

C. General Obligations Regarding Reports

All of the Periodic Reports described in this Agreement shall detail all additional steps taken to implement the commitments made by the District under the process developed in accordance with this Agreement, including: (1) What action has been taken since the previous Report, (2) Whether the District has met or failed to meet any deadlines for implementation set forth in this Agreement; (3) If the District has not met any deadline for implementation set forth in this Agreement, the extent to which work toward implementation has been completed and an explanation for any gaps; (4) What problems, if any, the District has encountered in complying with the Agreement, (5) What the District plans to do to remedy any compliance problems it has encountered; and (6) Any written complaints received by the District and responses to such complaints regarding: (i) Architectural Barriers subject to modification under this agreement, and (ii) Special Education Policies and Procedures being modified or implemented based upon

the adopted recommendations of the Policy Neutrals. All of the Periodic Reports described in this Agreement may be combined and submitted as a single document for each reporting interval.

VI. DISPUTE RESOLUTION

Except as otherwise set forth herein, all disputes concerning compliance with this Agreement shall be resolved as follows:

1. Within 30 days after any Party asserts that there is an issue regarding compliance, the Parties will meet in person in an attempt to resolve the dispute directly;
2. If the Parties cannot resolve the dispute directly after attempting to do so for a period of at least 14 calendar days, they will mediate the dispute with Cathy Yanni of the Judicial Arbitration and Mediation Services (JAMS). The Parties will schedule the mediation to take place at the earliest date reasonably available with the mediator. Should Cathy Yanni become unavailable during the Settlement Period, either as a mediator or to make decisions referenced elsewhere in this Agreement, the Parties shall agree upon a replacement mediator/decision-maker. If the Parties are unable to agree on a replacement, one shall be appointed by JAMS in San Francisco.
3. If mediation is unsuccessful, the Parties agree that Cathy Yanni or her successor will appoint an arbitrator from JAMS in San Francisco for binding arbitration regarding the dispute. Arbitration will be conducted in accordance with California Code of Civil Procedure § 1280 *et seq.*

VII. DAMAGES AND COSTS

A. Damages

The District shall make payments to each of the Claimants in consideration for a release of claims for damages that were or could have been asserted under the State Statutes & Regulations and the Federal Statutes & Regulations. The District shall cause to be paid \$12,000 to Rodney Balangitao and \$20,000 to Xavier Cordero. These payments and accompanying release of claims are separate from any agreement that either Claimant may enter into with the District regarding disputes involving their respective IEPs and demands for compensatory education under IDEA, which is being negotiated separately by each Claimant. The District shall cause the payments to be made to the Claimants within 30 days of the execution of this Agreement. The District can satisfy this obligation of monetary payment to Claimants by causing delivery of a check or checks to Claimants' Counsel totaling \$32,000. Except for Claimants, no monetary payment shall be made by the District to any Student with a Disability or the family of such student by reason of this Agreement, nor will claims for damages be released by any Student with a Disability, or any family of such student.

B. Fees and Costs for Work Through Finalization of the Agreement

The District agrees that Claimants' Counsel are entitled to reasonable attorneys' fees and costs for work performed from the date of April 1, 2006 through finalization of this Agreement. Within 30 days after the terms of this Agreement are finalized, Claimants' Counsel will provide the District with documents showing the hours worked on this matter beginning on April 1, 2006, including an adequate description of the tasks and work performed on the Compliance Complaint submitted to the California

Department of Education, as well as hourly rates and costs incurred. Upon receipt of such documents, the Parties will negotiate for a maximum of 60 days to determine if they can agree on an amount of reasonable attorneys' fees and costs to be paid by the District. The parties will also negotiate whether attorneys' fees incurred through the execution of the agreement will be paid in installments and, if so, any appropriate rate of interest.

If the Parties cannot reach agreement on the total amount owed within 60 days after hours worked documentation is provided, Claimants' Counsel may bring a fee motion before Cathy Yanni of JAMS on a schedule to be determined by Ms. Yanni. The District acknowledges Claimants' entitlement to fees and costs, but the District retains all rights to contest the amount of fees and costs under any grounds recognized under state or federal law, including decisional law.

C. Fees and Costs for Monitoring

The costs of monitoring, including both payment to the Architectural Monitor, Policy Monitor, and reasonable attorneys' fees incurred by Claimants' Counsel to review reports and address any issue identified by counsel and/or identified by the monitor regarding such reports, shall be paid by the District.

The first \$10,000 incurred by and paid to the Access Monitor for work conducted as set forth under § V.A.4, above, in any one Year will be paid as part of the District's obligation to spend 10% of its annual M&O Budget on Access work. Any additional fees incurred by the Access Monitor that exceed \$10,000 in any one Year will be paid by the District from another source of funding and cannot be credited towards the District's annual M&O Budget obligation.

For the first Year of the Architectural Settlement Period, the District will pay Claimants' Counsel's fees and costs up to \$15,000 for any work specific to Architectural Barrier removal from a source other than its M&O Budget. Any amount of fees and costs incurred by Claimants' Counsel for work specific to Architectural Barrier removal that exceeds \$15,000 will be paid from the District's M&O Budget and credited towards the District's annual obligation for the following Year. For Years two through twelve of the Architectural Settlement Period, the District will pay Claimants' Counsel's fees and costs up to \$10,000 for any work specific to Architectural Barrier removal from a source other than its M&O Budget. Any amount of fees and costs incurred by Claimants' Counsel for work specific to Architectural Barrier removal that exceeds \$10,000 will be paid from the District's M&O Budget and credited towards the District's annual obligation for the following Year.

For the first Year of the Special Education Policies and Procedures Settlement Period, Claimants' Counsel's fees and costs will be capped at \$42,500. For Year two, Claimants' Counsel's fees and costs will be capped at \$2,000. For Years three and four of the Special Education Policies and Procedures Settlement Period, Claimants' Counsel's fees and costs will be capped at \$12,500.

No later than June 1 of each calendar year of the Settlement Period, Claimants' Counsel shall provide the District and its counsel a detailed billing statement of all fees and costs incurred during the previous fiscal Year. For the final Year of the Settlement Period, Claimants' Counsel will submit a standard fee request on June 1 and a final accounting of the fees incurred through the conclusion of the Settlement Period no later than August 1. The request shall be processed within 45 days. This statement is to

include a description of the attorney or other legal personnel providing these services, the description of what services were provided, the amount of time spent, and the hourly rate. To the degree that it is possible, Claimants' Counsel will reduce fees by using a blended fee rate approach and by delegating tasks to the most junior staff person that can reasonably manage the implementation work.

Any disputes regarding payment of attorneys' fees under this provision shall be resolved using the dispute resolution procedures set forth at § VI, above.

D. Fees and Costs for Dispute Resolution

Fees and costs incurred in the resolution of any disputes will be awarded in accordance with the standards set forth in the Federal Statutes & Regulations, State Statutes & Regulations, and *Christianberg Garment Co. v. EEOC*, 434 U.S. 412 (1978). If the Parties are able to reach agreement on the substance of a dispute, but not on the issue of fees and costs, through direct meet and confer efforts or through mediation, the issue of fees and costs may be addressed through a motion for reasonable fees and costs made to an arbitrator appointed by Cathy Yanni from JAMS in San Francisco. A decision on such a motion will be binding on the Parties.

VIII. RELEASES

A. General Release

Except as otherwise provided in this Agreement (including the Dispute Resolution provisions of this Agreement), subject to the payment of funds as set forth in this Agreement, and in return for the consideration provided for in this Agreement, upon the execution of this Agreement and approval by the Governing Board, Claimants shall release the District and its officers, board members, trustees, directors, employees,

representatives, attorneys, agents, and insurers and Schools Insurance Authority (the “Released Parties”) from any and all claims, liabilities, obligations, demands, actions, and causes of action which could have been brought in a legal action under the Federal Statutes & Regulations and/or the State Statutes & Regulations for injunctive or declaratory relief related to and limited to Program Access in the District.

Claimants also release the Released Parties from any and all damage claims that have arisen under the Federal Statutes & Regulations and/or the State Statutes & Regulations at any time up through the duration of the Settlement Period, except that release of damages claims shall not preclude any tort claim associated with any physical injury that may be suffered at any time following the execution of this Agreement due to existing Architectural Barriers at District Facilities.

B. Waiver of California Civil Code § 1542

The Released Claims extend to all claims of any nature and kind, known or unknown, asserted or unasserted, existing, claimed to exist, foreseeable or unforeseeable, suspected or unsuspected, concealed or hidden, patent or latent, regarding the Released Claims. Claimants shall expressly waive and relinquish any and all rights that they may have under Section 1542 of the California Civil Code, which reads as follows:

SECTION 1542. GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH A CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

C. Limitations on Release

This General Release does not apply to any individualized educational obligations that the District may have to Claimants under the IDEA, California Education Code

56000 *et seq.*, or Section 504 of the Rehabilitation Act. Each Claimant is addressing his IEP-specific claims through separate, individual settlement agreements. Any releases specific to IEP claims will be contained in those agreements.

Nothing in this Agreement shall be interpreted as a release of any claims for injunctive relief, declaratory relief, or damages from any Student with a Disability or any other person with a disability who participates in Programs, services and activities of the District but who is not a Claimant.

IX. MISCELLANEOUS

A. Point Person

The District shall designate a “point person” who will be responsible for coordinating with the Access Monitor and the Policy Verifier(s) and for providing all reports required of the District by this Agreement. The Point Person will also have authority to collect information concerning the District’s actions in compliance with this Agreement and to respond to requests for information or other documents as provided in this Agreement.

B. Entire Agreement

This Agreement expresses and constitutes the complete and final understanding of the Parties with respect to the subject matter of this Agreement. The Parties hereto understand and agree that the terms of this Agreement supersede any prior discussions, understandings, or agreements, whether orally or in writing, between them related to the subject matter hereof. As set forth above, upon execution of this Agreement by all Parties and approval by the District’s Governing Board, the Tolling Agreement will be deemed null and void, and of no further force and effect.

C. Counterparts

This Agreement may be executed in counterparts, each of which shall be considered an original, but all of which, when taken together, shall constitute one and the same instrument.

D. Interpretation

The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings in this Agreement are solely for convenience and shall not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and the terms “and” and “or” shall mean “and/or.” This Agreement is the product of negotiation and joint drafting so that any ambiguity shall not be construed against any Party.

E. Additional Documents

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each Party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

F. Authority to Bind

The undersigned for the District each represent and warrant that they are authorized to sign on behalf of, and to bind, the District, and represent and warrant that this Agreement has been approved by the District’s Governing Board.

G. Violation of Agreement

A violation or claimed breach of this Agreement does not extend or expand the substantive right of any Party, nor would such violation or claimed breach permit

recission of this Agreement. The only recourse available to a Party concerning a violation of this Agreement is use of the Dispute Resolution provisions set forth in § VI or the specific applicable enforcement provisions set forth in any other section of this Agreement.

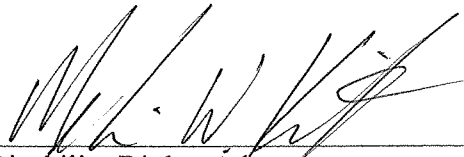
H. Early Termination of Agreement

If the District believes that it has successfully completed all necessary Architectural Barrier removal work under this Agreement, in advance of the end of the Architectural Settlement Period, or in the event that the District's remaining uncompleted Architectural Barrier removal obligations are encompassed by the Facilities Master Plan and scheduled for completion within less than one Year, the District may deliver a written report to Claimants' Counsel seeking an early termination of this Agreement, and the proposed early termination date. If Claimants' Counsel dispute the propriety of early termination, or the proposed date thereof, after thirty (30) days following receipt of the District's written report, the issue will be presented to Cathy Yanni under § VI, above.

Similarly, if the District believes that it has successfully implemented all recommendations by the Policy Neutrals that were adopted, the District may deliver a written report to Claimants' Counsel seeking an early termination of the SPED Policies and Procedures provisions of this Agreement, and the proposed early termination date. If Claimants' Counsel dispute the propriety of early termination, or the proposed date thereof, after thirty (30) days following receipt of the District's written report, the issue will be presented to Cathy Yanni under § VI, above.

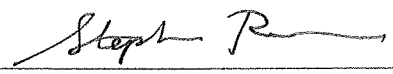
Agreed to in form:

Dated: 10/15, 2008



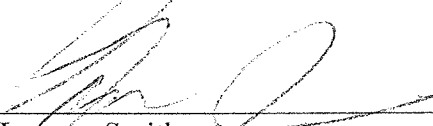
Disability Rights Advocates
By: Melissa W. Kasnitz
Counsel for Claimants

Dated: 10/15, 2008



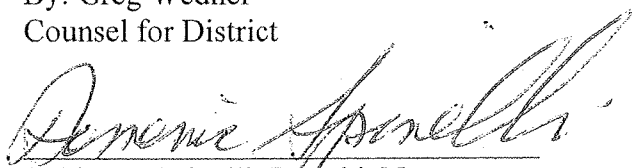
Protection & Advocacy, Inc.
By: Stephen Rosenbaum
Counsel for Claimants

Dated: 9/18, 2008



Lozano Smith
By: Greg Wedner
Counsel for District

Dated: 9-18, 2008



LaPlante, Spinelli, Donald, Nott
By: Domenic Spinelli
Counsel for District and Schools Insurance
Authority

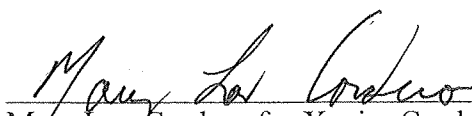
AGREED:

Dated: Oct. 6, 2008



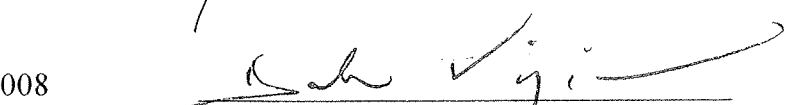
Dolly Balangitao for Rodney Balangitao
Claimant

Dated: 10-13, 2008



Mary Lou Cordero for Xavier Cordero
Claimant

Dated: 9-23, 2008



Dr. Dale Vigil
Superintendent
Hayward Unified School District